

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

WALTER CHRUBY	:	
Plaintiff,	:	CIVIL ACTION NO. 3:17-1631
v.	:	(MANNION, D.J.)
	:	(SAPORITO, M.J.)
KIRK BEARJAR, et al.,	:	
Defendants.	:	

ORDER

For the reasons set forth in the memorandum issued this same day, **IT IS HEREBY ORDERED THAT:**

- (1) Judge Saporito's report (**Doc. 43**) is **ADOPTED**.
- (2) DOC Defendants' motion to dismiss, (**Doc. 19**), is **GRANTED in part** and **DENIED in part**;
- (3) DOC Defendants' motion to dismiss (**Doc. 19**) with respect to Count I of plaintiff's complaint, is **GRANTED in part** and **DISMISSED** with prejudice, as it applies to plaintiff's retaliation claim against defendant Bearjar with respect to plaintiff's prison transfer and **DENIED in part**, as it applies to plaintiff's retaliation claim against defendant Bearjar with respect to placement of a sick prisoner in plaintiff's cell;
- (3) DOC Defendants' motion to dismiss (**Doc. 19**) with respect to Count II of plaintiff's complaint, is **GRANTED in part** and

DISMISSED with prejudice, as it applies to defendants Kowalewski, Schrock, Luter, Wood, and Feather and plaintiff's cell occupancy status prior to August 1, 2016 **and DENIED in part**, as it applies to defendants Kowalewski, Schrock, Luter, Wood, and Feather and plaintiff's cell occupancy status on or after August 1, 2016;

- (4) DOC Defendants' motion to dismiss (**Doc. 19**) with respect to all other claims against DOC Defendants is **DENIED**;
- (5) Medical Defendants' motion to dismiss (**Doc. 21**), is **GRANTED in part** and **DENIED in part**;
- (6) Medical Defendants' motion to dismiss (**Doc. 21**), with respect to Count III of plaintiff's complaint is **GRANTED** and **DISMISSED** with prejudice;
- (7) Medical Defendants' motion to dismiss (**Doc. 21**), with respect to all other claims against Medical Defendants is **DENIED**;
- (8) This matter is **REMANDED** to Magistrate Judge Joseph F. Saporito, Jr. for further proceedings.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: September 19, 2018